



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CWA - 176437

PRELIMINARY RECITALS

Pursuant to a petition filed on August 26, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), hearings were held on October 6, 2016 and December 6, 2016, by telephone.

The issues for determination are:

1. Whether his appeal is timely with regard to cost share determinations and, if so, whether the agency properly determined his monthly cost share; and
2. Whether the agency properly issued a notice of dis-enrollment from the IRIS program to the Petitioner for non-payment of his cost share.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On March 30, 2016, the income maintenance (IM) agency issued a Notice of Decision to the Petitioner to his address on [REDACTED] Milwaukee advising him that effective April 1, 2016, his cost share for Community Waivers would be \$450.50/month. He received a special housing deduction in determining his cost share. The notice further informed the Petitioner of the right to appeal this determination by filing a request for a hearing no later than May 17, 2016.
3. On May 6, 2016, the IM agency issued a Notice of Decision to the Petitioner advising him that effective June 1, 2016, his cost share for Community Waivers would be \$740.50/month. This was based on gross income of \$1,653.50/month and \$640/month for housing expenses. The notice further informed the Petitioner of the right to appeal this determination by filing a request for a hearing no later than July 18, 2016.
4. On May 13, 2016 and May 16, 2016, the IRIS agency issued notices to the Petitioner of his monthly cost share obligations and how to make the payments.
5. The Petitioner has not made any monthly cost share payments since April, 2016. In or about July, 2016, the agency issued a notice to the Petitioner informing him that he could establish a repayment plan.
6. On August 11, 2016, the IRIS agency issued a notice to the Petitioner that he would receive a disenrollment notice due to non-payment of his cost share and failure to establish a repayment plan.
7. On August 16, 2016, the IRIS agency issued a Notice of Action informing the Petitioner that he would be disenrolled from the IRIS program effective August 31, 2016 due to non-payment of his cost share.
8. On August 25, 2016, the IRIS agency issued a notice to the Petitioner that he would be disenrolled from the IRIS program effective August 31, 2016 due to non-payment of his cost share.
9. On August 26, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program.

In determining financial eligibility for IRIS, the income maintenance agency considers countable income and allowable deductions. After subtracting allowable expenses/deductions from gross income, any remaining income is the participant's monthly cost share. The payment of the cost share is required for continued participation in the program. IRIS Policy Manual, 2.2B.

According to IRIS policies, if a participant fails to pay more than two monthly cost share payments when due, the participant is offered a repayment plan. If the repayment plan is unsuccessful at resolving the outstanding cost share balance or the participant fails to comply with the plan for one or more months, the agency can initiate disenrollment from IRIS and Medicaid. A request for disenrollment may be rescinded only when the individual pays all cost share arrears prior to any fair hearing date. IRIS Policy Manual 2.2B.1, 2.2B.2.2.1 and 7.1A.1.

In this case, the Petitioner disputes the amount of his monthly cost share beginning April 1, 2016. With regard to his cost share determinations, the appeal is untimely. An administrative law judge does not

have jurisdiction over a matter if the request for hearing is not timely. In the case of Medicaid and Medicaid-waiver programs, a request for a hearing must be received within 45 days of the date of the agency action. Wis. Stats., § 49.45. In this case, the Petitioner's appeal on August 26, 2016 was 148 days after the cost share determination effective April 1, 2016 and 87 days after the cost share determination effective June 1, 2016. Therefore, the Petitioner's appeal is untimely with regard to the cost share determinations and DHA has no jurisdiction over those matters.

With regard to the IRIS agency's action to dis-enroll the Petitioner, the appeal is timely. The Petitioner does not dispute that he has not paid his monthly cost share since April, 2016. He asserts that he never received any notice of his cost share obligation and testified that, even if he had received the notices, he does not have sufficient resources to pay the cost share.

The IM and IRIS agencies produced the numerous notices that were issued to the Petitioner regarding his cost share obligation. There is no indication that they were not issued to the correct address or that they were returned to the Petitioner. Therefore, I must presume that he received the notices.

I recognize the Petitioner's argument that he feels he does not have sufficient funds to pay a monthly cost share. However, the regulations require the agency to make that determination based on the Petitioner's income and expenses and the Petitioner is required to pay the cost share if he wishes to participate in the program. The agency is allowed by law to dis-enroll a participant for failure to pay.

Therefore, based on the evidence presented, I conclude that the IRIS agency correctly seeks to dis-enroll the Petitioner from the IRIS program due to non-payment of his cost share.

CONCLUSIONS OF LAW

1. The Petitioner's appeal is not timely as to the IM agency's cost share determinations effective April 1, 2016 and June 1, 2016.
2. The IRIS agency correctly seeks to dis-enroll the Petitioner from the IRIS program due to non-payment of his cost share.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of January, 2017

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 23, 2017.

Milwaukee Enrollment Services
Bureau of Long-Term Support